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CIVIL AIR NAVIGATION BILL

JANUARY 20, 1925.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. WINSLOW, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 76]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 76) to create a bureau of civil aeronautics in the Department of Commerce, to encourage and regulate the operation of civil aircraft in commerce, and for other purposes, having considered the same, report thereon with the recommendation that it pass with an amendment, which is a substitute for the Senate provisions.

NECESSITY FOR THE LEGISLATION

Legislation for the regulation of civil air navigation has had the support of President Coolidge and President Harding. In his annual message at the beginning of the present Congress President Coolidge urges that "laws should be passed regulating aviation." President Harding, in his message of December 7, 1921, transmitting the

NOTE.—The special publications referred to hereinafter in this report are cited as follows:

International Air Navigation Convention, text of articles and annexes, together with amendments thereto and regulations issued thereunder up to June, 1924, printed for the use of the Committee on Interstate and Foreign Commerce, House of Representatives, December 1, 1924, prepared by the office of the legislative counsel—cited as Convention Compilation.

Law Memoranda upon Civil Aeronautics printed for the use of the Committee on Interstate and Foreign Commerce, House of Representatives, January 31, 1923—cited as Law Memo.

Bureau of Civil Air Navigation in the Department of Commerce—hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, Sixty-eighth Congress, second session, on H. R. 10522, December 17, 18, 19, 1924—cited as House Hearings.

Seventh Annual Report of the National Advisory Committee on Aeronautics, states as follows:

> I think there can be no doubt that the development of aviation will become of great importance for the purposes of commerce as well as for national defense. While the material progress in aircraft has been remarkable, the use has not been extensively developed in America. This has been due, in the main, to lack of wise and necessary legislation. Aviation is destined to make great strides, and I believe that America, its birthplace, can and should be foremost in its development.

In his annual report for 1924, Secretary Hoover says:

> In recent years the commercial use of air travel has increased to a considerable extent, though there is reason to fear that in this respect the United States is not keeping pace with some foreign countries. This method of transportation means much to our economic and social progress, and every encouragement, legislative and otherwise, should be given to its development. At the same time there should be created a proper system for its regulation, having in view, primarily, the safety of life both of passengers and operators and the orderly conduct of air navigation.

As it is expressed in the Aircraft Yearbook for 1924, more than six years have passed since the close of the World War and the United States has not yet enacted any form of Federal law for the regulation and encouragement of civil air navigation. Other countries of the world, far more distraught in their political and industrial affairs, have yet found time to provide regulatory law which is recognized everywhere as being the very foundation upon which to build air power. The effect of this delay is seen on the one hand in the alarming increase in fatal accidents among itinerant fliers, with the consequent solidifying of public fear and prejudice; and, on the other hand, in the indefinite postponement of commercial operations upon a sound basis, thus depriving us as a nation of the economic benefits possible to be conferred through air transportation and substantially weakening our national security in the air.

PURPOSES OF THE BILL

The necessity for the legislation arises from the fact that the encouragement and protection of civil air navigation is requisite in order to develop our air commerce, provide an auxiliary air fleet and personnel in time of war, develop a new manufacturing industry, and give the United States the increased economic prosperity resulting from speedier methods of transportation. The House substitute proposes to accomplish these ends by—

1. Providing through the proposed Bureau of Civil Air Navigation (secs. 1–7), for uniform Federal supervision of safety inspection of aircraft and airdromes, the regulation of the qualifications of aircraft crews, and the establishment and enforcement of air navigation rules (secs. 21–27).

2. Furnishing aids to air navigation by charting air routes, establishing air lighthouses, signal stations, radio directional finding facilities, and radio communication facilities, furnishing suitable weather reports, and providing at the Government fields, in cases of emergency, supplies and repairs at their fair market values. (Secs. 31–34, and sec. 324.)

3. Providing for the dissemination by the Government of air navigation information, for surveys from time to time of ou rair

navigation resources, and for the investigation of air navigation accidents. (Secs. 3 and 6.)

4. Establishing a legal basis for air navigation by providing rules of liability for common carriers by air, recognizing the right of public use of air space for navigation above minimum safe altitudes of flight, providing for the punishment for certain offenses aboard aircraft, and declaring the sovereignty of the air space above the United States to be in the United States as against foreign countries. (Sec. 201 and secs. 231–261.)

5. Regulating foreign air commerce so as to prevent the use of aircraft as instruments for evading our customs, public health, narcotic drug, and neutrality laws. (Secs. 301–323 and sec. 325.)

6. Insuring the participation of our aircraft in foreign air commerce despite the failure of the United States to ratify the International Air Navigation Convention, by denying foreign aircraft the right of flight in the United States unless our aircraft are granted the right to engage in commerce in the foreign country. (Sec. 26(f).)

7. Providing for the creation of an American merchant air fleet by admitting to American registry aircraft owned by citizens of the United States and extending to such aircraft the protection of our flag. (Secs. 22 and 404.)

MATTERS NOT AFFECTED BY THE HOUSE SUBSTITUTE

Among other matters the House substitute—

1. Does not affect military, naval, or postal aircraft of the United States, except that postal aircraft are subject to air traffic rules only.

2. Does not affect the question of patent rights in respect of aircraft.

3. Does not affect pending investigations of the relation of the aircraft industry and the Government during the World War.

4. Does not provide for the union of civil, military, and naval air functions in a "Department of Aeronautics."

5. Does not provide for the purchase or construction by the Government of military, naval, or postal aircraft.

6. Does not interfere with the technical research activities of the Army, Navy, National Advisory Committee for Aeronautics, or Bureau of Standards.

7. Does not restrict flight in the United States to aircraft owned by citizens of the United States. All foreign aircraft may fly in the United States, regardless of ownership, if they fly under a foreign flag and if they are owned by nationals of a country which grants reciprocal privileges to aircraft of the United States.

8. Does not provide a rigid detailed system of supervision of air commerce incapable of adjustment by administrative regulation to meet new factors in air commerce. The details of important regulatory provisions are in most cases left to regulations to be adopted by administrative officers.

9. Does not regulate the service, rates, profits, or securities of carriers by air or subject such carriers to the same drastic regulation as carriers by railroad. These matters are left to a future period of development of air commerce.

HISTORY OF THE LEGISLATION

The Senate first attempted to procure legislation upon civil air navigation by the passage of S. 3076 in January, 1922. The House during the Sixty-seventh Congress failed to take any action upon this Senate measure. In January, 1924, during the first session of the present Congress, the Senate passed a similar measure (the present bill, S. 76), which the Committee now recommends for passage with a substitute for the Senate provisions.

Because of the importance of providing an adequate legal basis for civil air navigation and the desire to provide reasonable but not unduly burdensome governmental regulation of air transportation, the House substitute has received the most extensive consideration. The House substitute was first introduced as H. R. 13715, Sixty-seventh Congress, by Representative Winslow in January, 1923, after having been prepared in constant consultation with representatives of the Department of Commerce; the State Department; the National Advisory Committee for Aeronautics; the War Department; the Navy Department; the Post Office Department; the Customs Division, Public Health Service, and Coast Guard of the Treasury Department; the Interstate Commerce Commission; the Weather Bureau of the Department of Agriculture; the United States Shipping Board; the Federal Narcotics Control Board; the Immigration Bureau of the Department of Labor; the National Aeronautics Association; the committee on aeronautics of the American Bar Association; and the chairman of the committee on aviation of the Conference of Commissioners on Uniform State Laws. The measure was reintroduced as H. R. 3243 at the beginning of the present Congress. A subcommittee during April and May of the past year considered the bill in detail and reported to the full committee a measure which was introduced by Mr. Winslow as H. R. 10522 last December. Hearings upon this bill were held immediately. At these hearings representatives of the Departments of Commerce, State, War, Navy, Treasury, and Labor, the Post Office Department, the National Aeronautical Association, the American Bar Association, and the Chamber of Commerce of the United States appeared and indorsed the bill with but few suggestions as to minor changes, the majority of which were adopted. The bill has, in addition, been indorsed by the National Advisory Committee for Aeronautics.

DIFFERENCES BETWEEN SENATE BILL AND HOUSE SUBSTITUTE

The principal differences between the Senate bill and the House substitute may be enumerated as follows:

1. The Senate bill provides no aids to air navigation except the sale of supplies and the furnishing of repairs at Government fields in cases of emergency. The House substitute provides, in addition, for the establishment of aerial lighthouses, signal stations, radio directional finding facilities, and radio communication facilities, for the charting of air routes, for the furnishing of suitable meteorological information, and for the opening of Government airdromes to the use of private aircraft under regulations of department heads. (Secs. 31–34.)

2. The Senate bill makes no adequate provision for the foreign air commerce of the United States. The House substitute adapts the customs, entry, report, and clearance, and public health laws to the peculiar needs of air commerce, protects our air commerce from discriminatory foreign legislation, conforms to the principles of the International Air Navigation Convention, and prevents conflict between our air navigation laws and the terms of the convention in case the United States should subsequently ratify the convention. (Secs. 51–53, 301–321, and 26 (f).)

3. The House substitute adjusts the status of the seaplane, which inadvertently is a "vessel" within the definition of that term in the existing navigation and shipping laws. (Secs. 221 and 222.) The Senate bill contains no provision on the subject.

4. The Senate bill provides for its enforcement by penalties imposed in criminal proceedings, which particularly in case of minor offenses prove costly, slow of operation, and present difficulties of proof, all of which tend to clog the courts. The House substitute makes use of the speedier, inexpensive, and more flexible administrative civil penalty which is used for the enforcement of the customs, immigration, navigation, and narcotic drug laws. (Secs. 64, 65, and 223.)

5. The Senate bill provides for Federal recognition of State airmen's licenses and for diverse State and Federal regulation to be applied to air navigation. The House substitute provides uniform Federal safety regulations for navigation in the navigable airspace. (Secs. 21–27.)

6. The House substitute protects the political sovereignty of the States in the air space above their soil from the application of any foreign doctrine of the right of air navigation free from restriction by the nation controlling the subjacent soil. (Sec. 201.) The Senate bill has no corresponding provision.

7. The House substitute stabilizes air commerce by providing for limitation of liability of air carriers (secs. 231–239) and by recognizing the principle of public right of flight in navigable air space above the minimum safe altitudes of flight without being subject to liability in tort. (Sec. 241.) The Senate bill makes no provision on the subject.

8. The House bill attempts to prevent the use of aircraft as instruments for the evasion of our customs, narcotic drug, and neutrality laws. (Secs. 301–307, 322, and 323.) The Senate bill has no corresponding provision.

9. The House substitute exempts the Air Mail Service from the regulations of the Secretary of Commerce. (Sec. 26 (e).) The Senate bill has a contrary provision.

10. The House substitute provides for the establishment of airspace reservations for Federal governmental purposes, such as the protection of our coast defenses. (Sec. 41.) The Senate bill has no corresponding provision.

11. The House bill eliminates the possibility of appropriations for the Bureau of Civil Air Navigation which would duplicate present appropriations for the technical research activities of the Army, Navy, National Advisory Committee for Aeronautics, and the Bureau of Standards. (Sec. 6 (a).) The Senate bill is silent on the point.

NECESSITY FOR COMPREHENSIVE BILL

The necessity for a comprehensive civil air navigation measure is stated by Secretary Hoover in his testimony before the committee on the House substitute:

> I have a feeling that this bill would in a very large measure encourage the industry and above all it would enable us to get a start from a governmental point of view in determining what steps are really and vitally necessary. One of the difficulties of the committee, as I see it now, and one of the difficulties of myself and of the department is that we are not able, from lack of funds and personnel, to critically examine the problems that are involved in the commercial phases of aviation.
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> This measure is one of the most comprehensive that has been undertaken in any country, as it covers the whole of the legal complexities involved in property rights and other things of that kind. The various European countries have attempted legislation in that direction piecemeal, and it would seem to me desirable to make a start on it with a consolidated attack, so that we will begin our legislation fundamentally right.
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> The legal phases of the bill have been subject to exhaustive study, some of them carried out in the Department of Commerce, some of them by informal agencies, and they mark a most constructive effort to take advantage of all of the experience gained elsewhere, and give us an initial piece of legislation from which we can build a direct code affecting aviation over a long term of years. I have no doubt that as the years go by aviation will develop more and more as a method of transit and it will require additional legislation, but with the sound development of legal principles at the start we will profit a great deal over the way we have handled our other industries. (House Hearings, p. 23.)

PROVISIONS OF THE BILL ARE NOT NOVEL

The provisions of the House substitute are not unique or unprecedented. In practically every case (as is pointed out in the digest of the bill by sections found in the Appendix to this report) each provision has a precedent in an existing provision of law, and is modeled upon and often paraphrased from it. Usually these existing provisions are those of the marine navigation laws. This is natural for the reason that air space, with its absence of fixed roads and tracks and aircraft with their ease of maneuver, present as to transportation practical and legal problems similar to those presented by transportation by vessels upon the high seas.

For instance, the safety inspection features of the bill are analagous to the law now administered in respect of vessels by the Steamboat Inspection Service of the Department of Commerce. Similar provisions are also found in the International Air Navigation Convention. The registration of aircraft is a function analagous to that carried on by the Navigation Bureau of the Department of Commerce in respect of vessels, and the citizenship requirements in the case of corporate owners of vessels are modeled almost verbatim upon those found in the Shipping Act of 1916. The aids to navigation, such as aerial lighthouses and signal stations and the charting of air routes, are similar to the aids now furnished marine navigation by the Bureau of Lighthouses and the Coast and Geodetic Survey of the Department of Commerce and the Hydrographic Office of the Navy Department. The air space reservations proposed to be established are modeled upon principles of the International Air Navigation Convention and reservations for governmental purposes established by Executive order under our public land laws. The report, entry, and clearance of aircraft are provided for in the same manner as the report, entry, and clearance of vessels under the marine navigation laws.

Likewise, the legal features of the House substitute [for a discussion thereof, see p. 12] have their foundation in existing principles of law. The declaration of the sovereignty of the United States as against foreign nations in the air space above the United States is based upon a similar declaration found in the International Air Navigation Convention. The application of the safety inspection regulations to intrastate commerce is identical with the application of the vessel registration and inspection laws which have since 1789 and 1838, respectively, applied to all craft upon navigable waters, whether the craft are engaged in interstate or intrastate transportation, or are engaged in pleasure operations solely. The enforcement by the civil penalties collectible in administrative or admiralty proceedings, is the same principle as is used in the enforcement of the customs, immigration, narcotic drug, and navigation laws, and the provisions of the House substitute are based upon the provisions of those laws. The declaration of what constitutes navigable air space is an exercise of the same source of power, the interstate commerce clause, as that under which Congress has long declared in many acts what constitutes navigable or nonnavigable waters. The public right of flight in the navigable air space owes its source to the same constitutional basis which, under decisions of the Supreme Court, has given rise to a public easement of navigation in the navigable waters of the United States, regardless of the ownership of the adjacent or subjacent soil. The provisions as to offenses upon aircraft and jurisdiction of such offenses are modeled upon the Criminal Code and Judicial Code provisions relating to maritime offenses. The provisions as to the liability of common carriers by air do not follow the marine transportation provisions found in the Limited Liability Acts and the Harter Act, but, on the other hand, are almost identical with those found in the Carmack-Cummins amendment applicable to rail transportation.

The whole framework and, in many cases, the very language of the House substitute may fairly be said to be merely the application to air transportation of provisions of statutes and principles of law long established as to water transportation.

INTERNATIONAL AIR NAVIGATION CONVENTION

[For references to matters discussed under this heading, see the Convention Compilation prepared for the use of the Committee]

Not only the domestic situation but the international relations of this country require the legislation. The International Air Navigation Convention, adopted in 1919, provides a comprehensive code governing international relations in civil air navigation, and requires the nations who are parties to the convention to enact legislation to carry out the terms of the convention. Twenty-two nations are parties to the convention, including Great Britain, Canada and other British Dominions, France, Belgium, Italy, and Japan. The United States is a signatory to the convention, but the convention has never been submitted by the President to the Senate for the advice and consent of that body to its ratification.

Failure to enact legislation carrying out the terms of the convention results in discrimination against the air commerce of the United

States under article 5 of the convention, which excludes from flight above the territory of any nation, a party to the convention, the aircraft of any nation not a party to the convention.

International flight with Canada has been obstructed by the absence of legislation. Canada, in applying for a derogation of article 5 of the convention in favor of the United States, states, in its application to the International Commission for Air Navigation, that the question of flight between the two countries—

> is further complicated by the fact that the United States has not yet passed any legislation creating a body to deal with aeronautics. No Federal laws have yet been passed regulating air traffic or granting authority to register aircraft or the personnel engaged in aerial navigation. Notwithstanding this, aviation in the United States is growing rapidly and an increasing number of American pilots and aircraft desire to cross into Canada and fly in Canadian territory.

The only pilots from the United States allowed to fly in Canada are those with military certificates engaged in noncommercial pursuits. (See Convention Compilation, pp. 20–22.)

The House substitute was prepared with due regard for the existence of the convention as a part of the international aeronautical law and the possibility that the United States might at some subsequent date ratify the convention with proper reservations. The provisions of the House substitute in nowise conflict with those of the convention, except in the case of the customs provisions in Annex H. As to these, the United States declared at the time of signing the convention "that it reserves complete freedom of action as to customs matters and does not consider itself bound by the provisions of Annex H or any article of the convention affecting the enforcement of its customs laws."

The House substitute is closely connected with the convention in the following respects:

1. In general, save where peculiar domestic conditions exist, it is desirable that the Federal regulations in respect of safety inspection, rules of the air, signals, qualifications of crew, identification marks, and registration of aircraft, should conform to the similar provisions of the convention, found in articles 5 to 25, inclusive, and Annexes A to E, inclusive. Sections 22, 23, 24, 26, and 27 of the House substitute, therefore, leave the Secretary of Commerce full discretion as to the details of the Federal regulations.

2. Article 1 of the convention provides for complete and exclusive sovereignty of each contracting State over the air space above its territory. The United States in section 201 of the House substitute gives notice of its adoption of the same principle, rather than of the principle of the international freedom of navigation in airspace maintained by many continental jurists regardless of the consent or legislative restrictions of the subjacent nation.

3. Article 5 of the convention provides for the exclusion from the airspace of the contracting States, except by a special and temporary authorization, of the aircraft of the United States and other noncontracting States. Section 26 (f) of the House substitute excludes foreign registered aircraft from the United States unless the foreign country permits aircraft of the United States to navigate its airspace. An amendment to article 5 has been approved by the International Commission for Air Navigation, and submitted by it to the contracting States for ratification. The amendment would permit the United States to be relieved from the prohibition of the article so far as it applies to any particular contracting State if such contracting State entered into a special convention for the purpose with the United States.

4. Section 203 of the House substitute contains a provision similar to article 32 of the convention, excluding foreign military aircraft from the United States, except under specified conditions.

5. Section 41 of the House substitute provides for the establishment of prohibited areas similar to those authorized by articles 3 and 4 of the convention.

6. The House substitute in sections 22(a), 404, 405, and 406, provides a somewhat more stringent rule for registering aircraft under the flag of the United States than is provided by article 7 of the convention for registration under flags of the contracting states. The above cited provisions in the House substitute conform in the main to similar provisions with regard to the registration of vessels of the United States found in the Shipping Act of 1916, as amended.

7. The House substitute follows the definition of public aircraft found in article 30 of the convention.

8. The House substitute in section 324 places certain duties on the Weather Bureau in respect of meteorological informtion for use in air navigation. The convention in article 35 and Annex G provides for the collection and dissemination of similar information.

9. The House substitute provides in section 32 that the Secretary of Commerce shall arrange for the publication of maps of air routes and for charting such routes. The convention in article 35 and Annex F provides for similar functions to be carried out by the contracting States.

10. Annex H of the convention provides a detailed set of customs regulations applicable to air navigation. The proposed bill, following the recommendations of the Treasury Department, does not adopt similar provisions, but in sections 51 to 53, inclusive, and 301 to 307, inclusive, makes our existing customs laws better adapted to air navigation and provides for an administration similar to that now prevailing in this country in respect of vessels. The United States at the time of signing the convention reserved to itself complete freedom on customs matters.

EXISTING AIR COMMERCE

The proposed legislation is not an attempt to encourage and regulate a practically nonexistent field of transportation. It is quite true that one of the main purposes of the bill is to have a Government agency in existence prepared to meet and further the boom period which it is expected will soon come in air transportation, just as the 1914 radio law enables the Government through the Department of Commerce to aid and regulate the present boom period, unthought of a few years ago, in the field of radio communication. However, the present air transportation industry is in itself of dimensions sufficient to require immediate legislative action.

In his statement before the committee, the Secretary of Commerce presents the statistics as follows:

There has been a considerable advance in commercial aviation in the last three years, since legislation was first entertained by this committee, and according to available statistics, for the last year there were about 124 operators of fixed base aircraft, and about 132 landing fields in the country.

The number of actual aircraft in these enterprises was estimated at about 600. It is claimed they made 106,838 flights, aggregating 3,014,611 miles; that 105 operators carried 80,888 passengers; that 23 operators carried a total of 208,302 pounds of freight, of which 40,172 pounds were mail under contract for the Post Office Department. Those figures, of course, do not cover the post-office services or any other governmental services.

The fixed base flying was carried on in 33 States, 124 fixed-base operators reported in 1923 that they had had 15 accidents with 12 fatalities and 12 injured. The other flyers, operating approximately the same number of machines—that is, flyers other than fixed-base operators—reported 179 accidents with 85 fatalities and 162 injured.

The chief causes of accident were errors in piloting, faulty craft, and stunts. A lack of inspection, of course, is the basic reason for the large death roll among nonfixed-base operators, and resulted not only in a great loss of life and injury to persons, but also in financial loss and waste in the destruction of aircraft and merchandise. There is more check and more inspection in the base flying, the fixed-base flying enterprises, than there is in what you might call the other types of flying, and therefore their accidents and fatalities were very much less than those that are totally uncontrolled, even in a private way.

The investment in commercial flying to-day, exclusive of materials and supplies, appears to be about $15,000,000.

Provision for a reasonable regulation of civil aviation, designed to safeguard life and property, is one of the features of this bill. Legislation for this purpose is urgent, and the bill, with minor changes, certainly meets the pressing need o that situation. (House Hearings, pp. 21 and 22.)

SAFETY INSPECTION AND AIR NAVIGATION INSURANCE

A Federal supervision of the registration, identification, and safety inspection of aircraft and airdromes, which is capable of a flexible administration through delegated authority sufficiently broad to meet new conditions as they arise, will serve to eliminate the "gypsy" flyer, standardize insurance risks and lessen insurance costs, reduce operating costs, eliminate hazards, and improve the standing of air/navigation in the public mind. The result of such Federal control should be an increase of business of air carriers, together with a decrease in the risk of capital invested in such carriers.

The "gypsy" flyer who wanders through the country and does not operate from fixed bases and upon fixed routes, was responsible during 1923 for 89 per centum of the accidents in commercial air navigation, despite the fact that the "gypsy" mileage and number of craft were approximately equal to the mileage and number of craft of the fixed-base commercial operators. The high percentage of accidents of "gypsy" flyers has been due to inexperience of the pilots, the use of cheap and inefficient equipment, and the absence of proper ground inspection. Regulation under the bill would eliminate flights under such conditions and serve to remove from the public mind one of the bases for prejudice against air transportation.

Insurance requires standardization of risk. Because of the absence of uniformity of air-traffic rules, of qualifications for airmen, and of inspection systems, such standardization can not be obtained According to the Aircraft Year Book for 1924—

In May, 1921, the National Aircraft Underwriters' Association prepared a set of minimum advisory rates, a system of grading pilots, and a standard set of indorsements for providing the various coverages. The rates were established on the basis of experience developed on risks written by the member companies. After a time the companies became convinced that most of the hazards of commercial air navigation could not be written at any set of rates. Lack of Government regulation concerning the fitness of pilots and the airworthiness of planes made possible the operation of a number of inferior planes by inferior operators. Because of these unsettled conditions, the insurance companies have been obliged to retire from the field until Congress enacts such legislation as is proposed in the Winslow bill [the measure recommended by your Committee], for example. A few companies—not members of the association at present—are still writing certain of the aircraft coverages.

AIDS TO AIR NAVIGATION

European countries have realized keenly the vital relation of the development of aviation to adequate national defense. They have further found, that unless military aviation is to bear the entire cost of the maintenance of aircraft industries and aviation development generally, that commercial air navigation must be encouraged. This has been done in every practical way, but principally by subsidizing common carriers by air.

The committee does not believe that direct subsidies are either in accord with the traditional policy of this country or desirable from

the economic viewpoint. The committee does believe, however, that air navigation should be furnished navigation aids corresponding to those now furnished by the Government to water navigation. In consequence, the House substitute (secs. 31–34) provides for the establishment of aerial lighthouses, signal stations, radio directional finding facilities, and radio communication facilities to the extent of such appropriations as Congress may make from time to time. It further provides for the charting of air routes and for the furnishing of meteorological information adequate for air navigation purposes. The above facilities are of a nature that would not attract private capital because of the impossibility of preventing competitors from making use of the facilities if established. It is, therefore, necessary that such facilities be furnished by a governmental agency.

The House substitute does not provide for Federal establishment of airdromes and landing field facilities. In water commerce these terminal facilities are usually provided by municipalities and private enterprise. Their use may be confined to the owner and private capital therefore can protect its investment in such facilities.

CUSTOMS, REPORT, AND ENTRY PROVISIONS

[See secs. 301–307, and 51–53]

Generally speaking, the administrative provisions of the existing customs laws apply to goods imported by aircraft as well as goods imported by water or by land. Some changes are, however, necessary to relieve aircraft from certain provisions of law obviously impossible for aircraft to observe, and to make adjustments required by the character of navigation by air, especially in regard to the report and entry of the aircraft. At present aircraft operators in order to participate at all in foreign commerce must place themselves in the position of violators of the law and the administrative authorities must fail to enforce the law against them literally.

Examples of the necessity for amendments to the existing laws relating to customs administration are as follows:

1. Title IV of the Tariff Act of 1922 places seaplanes within the definition of the word "vessel" and land planes within the definition of the word "vehicle." The result is that the report and entry and the remission and mitigation of penalties in the case of a seaplane are within the jurisdiction of the Secretary of Commerce, and the report and entry and the remission and mitigation of penalties in the case of a land plane are within the jurisdiction of the Secretary of the Treasury. It is generally admitted that one set of rules should be applicable to all aircraft.

2. Title IV of the Tariff Act of 1922 approaches the problems of air navigation from the protection of the revenues point of view. The amendments are necessary if transportation by aircraft is to be encouraged. At the same time the amendments do not neglect the protection of the revenues. For example, under the Tariff Act of 1922 all aircraft would have to report or make entry at the customshouse "nearest to the place at which such vessel or vehicle shall cross the boundary line or shall enter the territorial waters of the United States," unless the vessel or vehicle is sealed. In order to prevent

smuggling the amendments provide that all merchandise carried by an aircraft must be sealed, and they permit an aircraft to proceed to the port of entry for aircraft to which it is destined.

3. Many of the provisions of Title IV of the Tariff Act of 1922, though in terms applicable to aircraft are in fact inapplicable, as for instance the provisions relating to tonnage, sea stores, ports of entry, steerage passengers, and seizure and forfeiture.

4. In many respects Title IV of the Tariff Act of 1922 is inadequate, as for instance its failure to include provisions for the report and entry, and the unloading of merchandise, in the case of a forced landing of the aircraft.

LEGAL FEATURES OF THE BILL

It is particularly to be noted that the legal features of the bill have been prepared in consultation with, and indorsed by, the Solicitor of the Department of Commerce, the committee on aeronautics of the American Bar Association, the chairman of the committee on aviation of the Conference of Commissioners on Uniform State Laws. The maritime features of the bill were prepared in consultation with, and indorsed by, the Hon. Norman B. Beecher, formerly special counsel of the United States Shipping Board and minister of the United States to the International Conference of Maritime Law at The Hague in 1923.

The principal legal features of the bill are as follows:

1. Safety inspection of aircraft in intrastate commerce: A discussion of this problem will be found in that part of the Appendix to this report relating to section 21 of the House substitute.

2. Sovereignty in air space: A discussion of this problem will be found in that part of the Appendix to this report relating to section 201 of the House substitute.

3. Interference with private ownership: A discussion of this problem will be found in that part of the Appendix to this report relating to section 241 of the House substitute.

4. Admiralty proceedings for the enforcement of penalties against aircraft and for forfeiture of aircraft: A discussion of this problem will be found in that part of the Appendix to this report relating to section 223 of the House substitute.

5. Liability of carriers by air: A discussion of this problem will be found in that part of the Appendix to this report relating to sections 231 to 239 of the House substitute.

6. Relation to the International Air Navigation Convention: A discussion of this problem will be found hereinbefore in this report under the heading "International Air Navigation Convention," supra, p. 7.

STATE RIGHTS

The House substitute does not attempt to give the Federal Government exclusive jurisdiction over all air commerce. The only provisions of the bill which apply to intrastate commerce are those relating to registration and safety inspection. Service, rates, accounts, security issues, and establishment of through routes are examples of the sort of thing left without Federal regulation. Even as to registration and safety inspection the House substitute only provides for

a Federal jurisdiction of the same extent as that which has existed as to registration and safety inspection of vessels since 1789 and 1838, respectively. (Secs. 21–27.)

The House substitute does not interfere with the political sovereignty of a State over its air space. It merely protects the political sovereignty of the States by declaring, in accordance with article 1 of the International Air Navigation Convention, that as against foreign nations the sovereignty is in the United States, and this country will recognize no claim of a foreign nation to unrestricted freedom of flight over the airspace of the United States. (Sec. 201.) The apportionment of the political sovereignty of air space over the United States as between the Federal Government and the State governments in any particular instance depends upon the apportionment of powers under the Constitution. As the Uniform State Aviation Act says, "Sovereignty in the space above the lands and waters of this State is declared to rest in the State, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this State." (See Law Memo. p. 99.)

The House substitute does not interfere with the existing private property rights, if any, in air space subject to State law, but merely declares that, whether or not such rights do exist at law, the same public right to fly in navigable air space exists as there does to sail on navigable waters, the latter right having long been established, under decisions of the Supreme Court, as existing regardless of whether the subjacent or adjacent soil is privately owned. (Sec. 241.)

The House substitute does not deprive the States of their criminal jurisdiction over air offenses. It merely provides, in a very limited number of cases, that the same act constitutes an offense against both the State and Federal Governments, just as, for instance, theft of interstate goods from a railroad train is larceny under State laws and a Federal offense under act of Congress. (Sec. 66.)

The House substitute in nowise interferes with the powers of the States to establish air space reservations. The Federal Government merely has the power to establish such reservations as are necessary for the governmental purposes of the Federal Government, while the States retain the power to establish additional reservations for such other purposes as they deem desirable. (Sec. 41.)

APPENDIX

The appendix contains comments section by section upon the House substitute, to such extent as is believed desirable, explaining the effect of certain provisions of the section and any legal principles involved, and giving the source of the policy or language of the section in cases in which it is derived from some provision of existing law or the International Air Navigation Convention.

Section 1: The section provides for the appointment of a commissioner of civil air navigation by the Secretary of Commerce. The appointment of the commissioner will be made by examination under civil service laws, for section 7 of the civil service act exempts only bureau heads who are nominated for confirmation by the Senate, and Schedule A under the act exempts only bureau heads appointed by the President without confirmation by the Senate. In the Department of Commerce in which the new bureau is to be located, the chiefs of bureaus are appointed by the President, by and with the advice and consent of the Senate, except the Commissioner of the Bureau of Lighthouses, who is appointed solely by the President. There is no controlling practice throughout the Government, however, as to the appointment of bureau chiefs. In the De-

partment of Agriculture, for instance, all the bureau chiefs, except the Chief of the Weather Bureau, are appointed by the Secretary of Agriculture. For the practice in recent new bureaus created by the Congress, see the following citations: Children's Bureau, 37 Stat. 79; Women's Bureau, 41 Stat. 987; Bureau of Standards, 31 Stat. 1449; Navy Bureau of Aeronautics, 42 Stat. 140; Veterans' Bureau, 42 Stat. 147; Bureau of Accounts, 42 Stat. 24; Budget Bureau, 42 Stat. 22, and Bureau of Dairying, 43 Stat. 243.

Section 2: No comment.

Section 3: The parenthetical clause in subdivision (a) of this section relating to expenditures for personal services and rent at the seat of Government, and expenditures for law books, books of reference, and periodicals, is necessary in order that the temporary lump-sum appropriation provided by section 7 may, when subsequently made, be used without specification for those items. For restrictions on expenditures on those items, see personal service, 22 Stat. 255; rent, 19 Stat. 370; law books, books of reference, and periodicals, 30 Stat. 316.

The bulletin proposed to be published under subdivision (b) of this section would be roughly equivalent to a combination of the Steamboat Inspection Bulletin, the Lighthouse Service Bulletin, and the Notices to Mariners now issued by the Department of Commerce in respect of water transportation. The printing of the bulletin would be subject to the approval of the Director of the Bureau of the Budget under the resolution of May 11, 1922. (42 Stat. 541.)

Subdivision (c) of the section is based upon section 308 (5) of the transportation act, 1920 (41 Stat. 472), under which the United States Railroad Labor Board makes easily available for lawyers and other interested persons, legal materials which would otherwise be extremely difficult of procurement.

Section 4: No comment.

Section 5: Details of officers under the section may be initiated solely by the Secretary of Commerce, and are not mandatory. It is understood that especially during the first few years of the new bureau's existence some valuable officers for the bureau may be obtained from the Army, Navy, and Public Health Service, by detailing members thereof who have had experience peculiarly fitting them for service in the bureau. Details to the bureau will in nowise alter the pay and allowances to which an officer is entitled, nor give him flying pay for service performed in the bureau unless he is on duty that requires him "to participate regularly and frequently in aerial flights." (See 41 Stat. 769, 42 Stat. 632, and 42 Stat. 724.)

Section 6: It is to be noted that the section does not authorize the commissioner to engage in scientific or technical research work, such as is now conducted by the National Advisory Committee for Aeronautics, the Bureau of Standards, the Army, and the Navy. Any appropriation for the bureau for such purpose would, therefore, be subject to a point of order under the House rules. For the organic law of the National Advisory Committee for Aeronautics authorizing that agency to conduct such research work and to operate laboratories therefor, see Law Memo., p. 55.

Section 7: The appropriation covers the period from the passage of the act until July 1, 1926, approximately 16 months, if the act is passed during the present Congress. The amount authorized to be appropriated was arrived at from detailed estimates submitted by the Department of Commerce.

Section 8: It is believed that the many legal questions arising in the administration of the bill and preparation of regulations will require additional assistants in the office of the Solicitor in the Department of Commerce. In consequence, provision is made for the appointment in that office of not more than three attorneys and such additional law clerks as may be appropriated for by Congress from time to time. The Solicitor of the Department of Commerce is an officer of the Department of Justice and, therefore, the additional legal assistants are appointed by the Attorney General, just as are the present law clerks in the office of the solicitor.

Section 21: The section makes the regulations under "this title" applicable to intrastate air navigation. Such regulations relate solely to registration, identification, safety inspection, report, entry, and clearance, and similar matters specified in the particular title. The section in nowise interferes with State jurisdiction in intrastate commerce of such matters as service, rates, accounts, security issues, and through routes of air carriers, nor does it in any way affect the power of the State to regulate such matters in interstate commerce subject to the ordinary constitutional restrictions as to the concurrent power of the States over certain of such matters.

In the field of maritime commerce Federal regulations have always applied to the registration and safety inspection of vessels engaged in operation upon the navigable waters, whether or not the particular commerce was interstate or intrastate. For instance, the first registration law, that of 1789 (1 Stat. 55, 58), applied to all vessels upon the navigable waters, and the first safety inspection act, that of 1838 (5 Stat. 304), had a similar application. The application of the marine navigation laws to intrastate laws has been held constitutional in the city of Salem (37 Fed. 846), Oyster Police Steamers (31 Fed. 763), and 33 Op. Atty. Gen. 500.

The necessity for the application of registration and safety inspection regulations to intrastate air commerce is obvious from the fact that Congress can not effectively "foster, protect, control, and restrain" interstate and foreign commerce by air if Federal inspection of aircraft and airmen and Federal rules of the air and registration provisions do not extend to all air transportation in the navigable air space. An uninspected aircraft engaged in intrastate air commerce is dangerous not merely to itself, but also to aircraft which it meets engaged in interstate and foreign commerce. An unqualified pilot operating a pleasure craft endangers interstate and foreign commerce by air as well as intrastate commerce by air and aircraft operated for pleasure or other noncommercial purposes. The danger of diverse rules of the air, including traffic rules and signals, is obvious.

The section has been approved as constitutional by the committee on aeronautics of the American Bar Association, by the committee on the uniform aviation act of the Conference of Commissioners on Uniform State Laws, and by the Solicitor of the Department of Commerce. The declaration in the section as to the relationship of interstate and intrastate air navigation is paraphrased from the language of Chief Justice Taft in the Wisconsin Rate Case (257 U. S. 563), in which Federal regulation of intrastate rates was held constitutional where necessary for the effective regulation of interstate and foreign rates.

For materials relating to the constitutionality of the section and for additional cases upon the power of Congress to regulate intrastate commerce where necessary to protect and prevent undue burdens on interstate commerce see Law Memo., pp. 44, 48, and 52 to 54.

The power of the Federal Government under the interstate commerce clause to regulate intrastate commerce depends upon the existence of facts showing that interstate commerce can not be adequately protected without the regulation of intrastate commerce. Under such circumstances, it becomes desirable that the Congress in the legislation itself place before the courts its view as to the existence of such facts. It is for this reason that the declaration found in the section is included. Similar declarations are found in section 2 (b) of the packers and stockyards act, 1921 (42 Stat. 160), section 2 (b) of the grain futures act (42 Stat. 998), and section 122 of the food control and District of Columbia rents act (41 Stat. 304). All of the statutes were held constitutional. For comment of the court upon such congressional declarations, see Stafford *v.* Wallace (258 U. S., 495, 520–1), Block *v.* Hirsh (256 U. S. 135, 154), and Chastleton *v.* Sinclair (264 U. S. 543).

Section 22: This section provides that no aircraft can be registered under the laws of this country and entitled to the protection of its flag unless the aircraft is owned by a citizen of the United States and is not registered under the law of any other country. The term "citizen of the United States" is defined in section 404 of the House substitute. The section in nowise places any limitations as to what craft may operate in the United States, but only places limitations upon what craft may operate under the flag of this country. The provisions limiting, under certain circumstances, the operating of a foreign aircraft in the United States will be found in section 26 (f). For the provisions of the International Air Navigation Convention relating to registration of aircraft see articles 6 to 9 of the convention (p. 10 of the Convention Compilation).

Section 23: The International Air Navigation Convention prescribes a code of identification marks and makes a certain allotment to the United States. It is to be presumed that the Secretary of Commerce would adopt such allotment in his regulations for the enforcement of this section. See article 10 and Annex A of the convention, pp. 10 and 35, respectively, of the Convention Compilation. For the table of identification marks see page 38 of the Convention Compilation.

Section 24: This section gives to the Secretary of Commerce power to make regulations from time to time for the safety and protection of air transportation. It is not to be expected that Government representatives will, for instance, individually inspect each aircraft as to its airworthiness from day to day; rather, the Federal inspection will be for the purpose of seeing to it that the operators

install proper inspection systems of their own, and for the purposes of checking up from time to time the actual effect of the system in adequately caring for the airworthiness of the operator's craft.

The American Engineering Standards Committee in 1920 recognized the Bureau of Standards of the Department of Commerce and the Society of Automotive Engineers as joint sponsors for the project of creating a safety code for aeronautics in accordance with the rules of that committee governing work of such character. Preliminary drafts of the code, setting up standards for airplane structure, power plants, equipment, and maintenance of airplanes, signals and signaling equipment, airdromes and air routes, traffic and pilotage rules, qualifications for airmen, balloons, airships, and parachutes are now available, subject to later final revision. This safety code, for instance, together with the corresponding regulations in the annexes of the International Air Navigation Convention, would serve as a basis for the formulation of the regulations of the Secretary of Commerce under this section. The above safety code is known as the American Aeronautical Safety Code, and copies of preliminary drafts of various parts of the code are obtainable from the Bureau of Standards.

For airworthiness regulations in subdivision (*a*) of this section, see article 11 in Annex B of the International Air Navigation Convention (pp. 10 and 38 of the Convention Compilation), and parts 1, 2, 3, 4, 8, 9, and 10 of the American Aeronautical Safety Code.

For regulations as to the inspection of air navigation facilities under subdivision (*b*) of this section, see Part 5 of the American Aeronautical Safety Code.

For regulations under subdivision (*c*) of this section as to signal rules and rules of the air, see sections 1, 2, 3, and 5 of Annex D of the International Air Navigation Convention (p. 41 of the Convention Compilation), and part 6 of the American Aeronautical Safety Code; as to use of ballast, see section 4 of Annex D of the International Air Navigation Convention and section 613 of the American Aeronautical Safety Code; as to navigation of aircraft upon water, see sections 600 (*g*), 607, 422, and 437 of the American Aeronautical Safety Code; and as to safe altitudes of flight, see section 612 of the American Aeronautical Safety Code.

For regulations as to qualifications of airmen, see article 12 of Annex E of the International Air Navigation Convention (pp. 11 and 48 of the Convention Compilation), and Part 7 of the American Aeronautical Safety Code. For regulations as to log books under subdivision (*e*) of the section, see articles 19 and 20 of Annex C of the International Air Navigation Convention (pp. 12 and 39 of the Convention Compilation).

The power to prescribe regulations as to airworthiness would include regulations as to safety equipment, and the power to prescribe regulations as to signal rules would include regulations compelling the carriage of wireless apparatus. For regulations on these subjects, see article 14 of the International Air Navigation Convention (p. 11 of the Convention Compilation), and parts 4 to 10 of the American Aeronautical Safety Code.

Section 25: Provisions corresponding to certain portions of the section can be found in article 19 of the International Air Navigation Convention. (See p. 12 of the Convention Compilation.) The penalties for violation of this section will be found in section 64.

Section 26: No comment as to subdivisions (a), (b), (c), and (d).

Subdivision (e) exempts from the regulations of the Secretary of Commerce air navigation of the Army, Navy, Air Mail Service, and National Advisory Committee for Aeronautics. These agencies already have in existence inspection systems for their aircraft and training systems for their airmen that are adequate, and duplication by the Secretary of Commerce is unnecessary. The regulations of the Secretary of Commerce will, however, apply to governmental agencies other than those above mentioned that hereafter enter the field of air navigation for the reason that such agencies will not have inspection and training systems established. For them to set up systems of their own would be unnecessary duplication of matters for which the Secretary of Commerce would already have available adequate facilities. The above-specified agencies of the Government are also exempted from the traffic rules and other regulations of the Secretary of Commerce.

Subdivision (f) of this section enables the Secretary of Commerce to retaliate against legislation by a foreign country discriminating against the air commerce of the United States. Aircraft of foreign countries may navigate in the United States without being registered or inspected under our law and without having airmen qualified under our laws so long as the foreign country grants a reciprocal privilege. Article 5 of the International Air Navigation Convention prohibits

any nation a party thereto from allowing a flight above its territory of an aircraft registered under the law of a nation not a party to the convention. So long as the United States fails to ratify the convention, the convention would, by its terms, bar aircraft of this country from flight in Great Britain, Canada and other British Dominions, France, Italy, and Belgium, among others. An amendment to the convention permitting any nation a party thereto to conclude special conventions for the avoidance of such prohibition is pending, but has been ratified by only 5 of the 22 contracting nations. The subdivision is modeled upon a similar provision in the marine navigation laws. (See sec. 4400 R. S., am. 34 Stat. 68.)

Section 27: No comment.

Sections 31, 32, and 33: For the policies involved in these sections, see discussion under the heading "Aids to Air Navigation" in the main body of this report (p. 10, supra).

Section 34: The section provides for the furnishing of fuel and repairs at Government airdromes under regulations of the head of the department or independent establishment having jurisdiction over the airdrome. Such services, however, are limited solely to cases where the action is necessary by reason of an emergency—such as a forced landing—to the continuance of the aircraft to the nearest private airdrome. The services are to be furnished at the local fair market value. The committee does not believe that the Government should enter the field of competition with private capital in the furnishing of supplies and repairs to aircraft. It does believe, however, that the Government should furnish aid in emergencies. It is impossible to prevent a private operator from landing in an emergency upon a Government field. As the law now stands the Government is often forced to care for the operator and his craft at considerable cost until the operator can obtain from the nearest point, often many miles away, the necessary fuel or repairs. If such fuel or repairs could be furnished by the Government officers in charge of the field without expense to the Government, the Government would not only be taking a humane attitude toward the situation but would be saving itself expense that frequently attaches to unwelcome guests of whom there is no way to be rid of expeditiously.

Section 41: Airspace reservations must necessarily be established in order that domestic and foreign aircraft may not be able to fly over forts and certain other governmental structures, and in order to protect aircraft from dangers of flying over Weather Bureau stations where pilot balloons are used, or over experimental or training fields of the military or naval forces. The power of the President to establish Federal Government airspace reservations in the States in nowise diminishes the power of the States to establish airspace reservations for such other purposes as they deem advisable. For similar provisions, see articles 16 and 17 of the International Air Navigation Convention (p. 12 of the convention compilation), and sections 612 and 615 of the American Aeronautical Safety Code. Under existing provisions of law the President has the right by Executive order or proclamation to create reservations in the public lands of the United States for certain governmental and other purposes. (See 36 Stat. 847; 34 Stat. 225; and 26 Stat. 1095, 1103.)

Section 51: For a general discussion of the necessity of adjustment of the report, entry, and clearance provisions of the marine navigation laws to air transportation, see the discussion hereinbefore in this report under the heading "Customs, Report, and Entry Provisions" (p. 11, supra).

The definition in subdivision (a) conforms to the definition of "United States" in subdivision (j) of section 401 of the tariff act of 1922, except that it adds "including the territorial waters thereof and the air space above such territory" in order to make the definition applicable to air navigation.

Subdivision (b) is the same as section 401 (c) of the tariff act of 1922.

Subdivision (c) is new, except that the customs laws (section 422 of the tariff act of 1922) have special provisions for "sea stores" and "ship stores."

Subdivisions (d) and (e) have no corresponding provisions in the customs and navigation laws.

Section 52: Under existing law (the sundry civil appropriation act of August 24, 1912 (34 Stat. 417, 434), the sundry civil appropriation act of August 1, 1914 (38 Stat. 609, 623), and various special acts the President is authorized to designate ports of entry. Under the generally accepted interpretation he is not authorized to designate more than approximately 300.

(b) For provisions corresponding to subdivision (b), see sections 434 and 435 of the tariff act of 1922.

(c) For exceptions corresponding to those in subdivision (c) see section 441 of the tariff act of 1922, and article 15 and article 12 of Annex H of the International Air Navigation Convention (pp. 11 and 72 of the Convention Compilation).

Section 53: No comment.

Sections 61 and 62: The investigative powers of the Secretary of Commerce are limited to the obtaining of information necessary for the enforcement of the regulatory provisions of the act, such as information relating to the violation of a safety regulation. The powers may not be used, for instance, to acquire information for general purposes of public dissemination under section 6. No "immunity bath" provision is included, and any individual who refuses to testify or produce papers on the ground that he may incriminate himself, may not be forced to testify in the absence of such immunity. The provisions of the section are modeled after similar provisions in section 12 of the interstate commerce act, section 310 of the transportation act of 1920, sections 27 and 29 of the shipping act of 1916 (39 Stat. 737), and section 9 of the Federal Trade Commission act. The provisions of the section are more limited than those of the above acts, not only in the absence of the "immunity bath" provision but also in the requirement that a witness may not be summoned to testify or produce papers at a place of hearing more than 100 miles distant. This latter restriction conforms to the practice now prevailing in the courts that a witness living outside the district but within 100 miles of the court may be compelled to attend, but in other cases the witness may not be compelled to attend but may appear voluntarily or have his testimony taken by a deposition.

Section 63: The provisions of this section are analogous to those for the issuance and revocation of licenses of packers under sections 203 and 204 of the packers and stockyards act of 1921, except that an appeal is taken to the Federal district court instead of the circuit court of appeals and that review is clearly limited to questions of law, i. e., failure to observe the requirements of the Constitution or any law or regulation thereunder applicable to the action of the Secretary of Commerce. The review does not include matters that are left to the Secretary's discretion. The provision is necessary for, regardless of the wisdom of the policy, it would be unconstitutional to require the court, upon appeal, to substitute its judgment for that of the Secretary as to questions of fact, i. e., the discretionary matters as to which the Secretary is unrestricted in his determination by any specific requirement of the Constitution or a statute or regulation thereunder. (See Keller *v.* Potomac Electric Power Co., 261 U. S. 428.)

Sections 64 and 65: The regulations of the Secretary of Commerce under the act are enforced by civil instead of criminal penalties. Similar civil penalties are used for the enforcement of customs, navigation, immigration, and narcotic drug laws. The flat amount of the penalty is imposed by the subordinate officer, acting for the Secretary of Commerce, whenever a violation is shown, but the person subject to the penalty has the right, under subdivision (e) of section 65, to appeal to the Secretary for remission or mitigation of the penalty. In such appellate proceeding the facts are fully considered by superior officers and the penalty is either remitted, in case the facts do not justify its imposition, or mitigated to accord with the degree of culpability. Under the administrative civil penalty a flexible system of enforcement is present, one which does not clog the courts, which makes use of simple rules of evidence, which does not have the delay of criminal proceedings, and which is inexpensive to both parties.

Under section 65 the penalty also constitutes a lien against the aircraft involved, and if, after the remission and mitigation proceedings are completed, there is a failure to pay the penalty, it may be collected by proceedings in rem against the aircraft or in personam against the individual, or, if the aircraft is engaged in foreign commerce, clearance may be denied it. In the case of a seizure of the aircraft, either prior to or after the institution of libel in rem proceedings, the aircraft may be released under bond in order that commerce may be facilitated. For discussion as to the fairness of the civil penalty in practice, see House hearings, pp. 56, and 75 and 76. Compare sections 594, 602, 603, 604, 605, 610, and 618 of the tariff act of 1922.

Section 66: The section specifies a limited number of crimes in respect of air transportation. The section in nowise deprives a State of the power to make the same act a State crime, but merely makes the offense, in addition, a Federal crime.

As to subdivisions (a), (b), and (c), compare 297 of the Criminal Code [35 Stat. 1146]. As to subdivision (g) compare with section 298 of the Criminal Code [35 Stat. 1147], and as to subdivision (h) see 37 Stat. 670. The above provisions relate to similar crimes in respect of water and air transportation.

Section 67: The amount of the fees is left to the discretion of the Secretary. Being a fee, the amount could not exceed the cost of the service in respect of which the fee is paid. The Secretary may, however, fix the fees at a less amount. In view of the limited air commerce at present, it may well be that, during the first few years of the administration of the act, fees should not fully equal the cost of the services rendered. For this reason the matter is left to the discretion of the Secretary. This section does not make the bill a revenue bill, for a fee in payment of governmental service does not constitute a tax for raising revenue. (See, for instance, U. S. *v.* James, Fed. Cas. No. 15464; Twin City Bank *v.* Nebeker, 167 U. S. 196; and U. S. *v.* Norton, 91 U. S. 566.)

Section 201: Article 1 of the International Air Navigation Convention provides that "the high contracting parties recognize that every power has complete and exclusive sovereignty of the air space above its territory." In this section the Congress declares that the United States adheres to the same principle and not to the principle urged by some international jurists that there is a free right of flight in the air space above a nation regardless of the consent or the restrictions by law of that nation or of any political subdivision thereof. The section in nowise affects the apportionment of sovereignty as between the several States and the United States, but only as between the United States and the rest of the world. The sovereignty of the air space remains in the States, except in so far as they may have delegated it to the United States under the commerce clause and other constitutional provisions. For a discussion of the merits of the various theories of sovereignty, see Law Memo. pp. 86 to 98.

Section 202: No comment.

Section 203: The section follows the policy found in article 32 of the International Air Navigation Convention. (See p. 14 of the Convention Compilation.)

Sections 221 and 222: Section 3 of the Revised Statutes provides that the term "vessel," when used in an Act of Congress, "includes every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water." A similar definition is found in the shipping act of 1916 (40 Stat. 900), and is incorporated by reference in the merchant marine act of 1920 (41 Stat. 1008). The definition obviously includes the seaplane and certain provisions of the navigation laws relating to motor boats have, in fact, been applied to seaplanes. The navigation and shipping laws, including the rules for the prevention of collisions, are not suited to navigation of aircraft and should not be applicable to them. For instance, the international rules for the prevention of collision of vessels (26 Stat. 320, am. 28 Stat. 82, 29 Stat. 381, 885, 31 Stat. 30, and 34 Stat. 850) contain provisions that, under certain circumstances, water craft approaching each other shall stop their engines and slow down. In the case of a seaplane, the most suitable regulation for the prevention of collision, under such circumstances, would be just the opposite, to require the seaplane to speed up its engines in order to rise from the water. The Secretary of Commerce, under section 24 (c) of the bill, is authorized to prescribe rules for the prevention of collision between vessels and seaplanes.

Section 223: In consequence of the passage of the bill, aircraft and their cargo will, under the customs, narcotic drug, public health, and other laws and, under the terms of the bill itself, be subject to forfeiture or to penalties or liens under certain circumstances. In case of failure to pay any penalty after proper proceedings for mitigation or remission and in case of an unremitted forfeiture of a vessel, and in certain other circumstances the penalty, lien, or forfeiture is usually enforceable by proceedings by libel in rem in admiralty. It is desirable that analogous proceedings be used for the enforcement of penalties, liens, and forfeitures of aircraft.

Proceedings for the enforcement of penalties or forfeitures against aircraft may for constitutional purposes be classified as follows: Proceedings in case of aircraft seized upon the high seas or navigable waters of the United States; proceedings in the case of aircraft seized upon land; and proceedings in the case of aircraft seized while in the air. The latter case, while perhaps impracticable at present, may well take place in the future, particularly with respect to lighter-than-air craft.

As to seizures upon the high seas or navigable waters of the United States, the law is that proceedings for the enforcement of penalties or forfeitures against a vessel so seized are causes of admiralty and maritime jurisdiction. (*La Vengeance*, 3 Dallas 297, the *Sally*, 2 Cranch 406, the *Betsy* and *Charlotte*, 4 Cranch 442). Of course any aircraft, such as a seaplane, being capable of navigation upon water, falls within the term "vessel" as known to the maritime law and as

defined in section 3 of the Revised Statutes. An aircraft has been held a vessel, and an injury while employed upon it has been held to be one cognizable in admiralty, by the New York Court of Appeals in In re Reinhardt (232 N. Y. 115). Nevertheless despite such decision it is not believed that the enforcement of the penalty or forfeiture against an aircraft would be a matter cognizable in admiralty unless the craft is being primarily operated in maritime in lieu of air commerce. Nor would the fact that the seizure of the aircraft occurred upon the high seas or other navigable waters, alter this conclusion, for while locality is in general the test in determining whether a tort or a seizure is one cognizable in admiralty, still it has been suggested by the courts that this would not be sufficient to give such jurisdiction if the case was not also of a maritime nature in other respects. The tort or seizure must be in connection with maritime commerce or transportation. (See Atlantic Transport Co. of W. Va. v. Imbrovek, 234 U. S. 52.) For instance, the mere fact that an assault occurs while the participants are in swimming or that an attachment of baggage by a sheriff is made while the baggage is on board a vessel, does not make the cause one cognizable in admiralty. (See Benedict, Admiralty (4th ed.), sec. 231.)

In no case does a seizure upon land of any craft or article other than a vessel, present a case cognizable in admiralty. (The *Sarah*, 8 Wheat. 391; United States v. Winchester, 99 U. S. 372; Union Insurance Co. v. United States, 6 Wall. 759; Morriss's Cotton, 8 Wall. 507; and 443 Cans of Frozen Egg Product, 226 U. S. 172.)

It seems fair to conclude that seizures of an aircraft, whether in air or on land or water, are not subjects of admiralty jurisdiction and procedure, at least so long as the seizures were not in connection with a violation of the laws for marine transportation. Nevertheless, it seems advisable that all proceedings for the enforcement of penalties and forfeitures against an aircraft should be modeled upon the libel in rem in admiralty just as was attempted in the case of land seizures under the confiscation acts of 1861 and 1862, and section 10 of the food and drugs act of 1906. The simplicity of the proceeding, with its absence of technical rules of evidence, pleading, and the like, commends its use. The food and drugs act section referred to reads, in part, as follows: "That any article of food * * * shall be liable to be proceeded against in any district court of the United States within the district where the same is found and seized for confiscation by a process of libel for condemnation. The proceedings of such libel case shall conform, as near as may be, to the proceedings in admiralty except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit and in the name of the United States."

Under the above language, however, it was held that only the seizure should conform to admiralty proceedings, and that the review of the district courts' determination should be by writ of error rather than by appeal. (443 Cans of Egg Product, 226 U. S. 172.) Inasmuch as the enforcement of penalties and forfeitures against an aircraft does not present a case cognizable in admiralty but a civil suit at common law, a jury trial can not be dispensed with but must be preserved in accordance with Article VII of the Amendments to the Constitution. (The *Sarah*, 8 Wheat. 391; United States *v.* 130 Barrels of Whisky, 27 Fed. Cas. No. 15938; J. W. French, 13 Fed. 916, 924; cf. United States *v.* the steamship *The Queen*, 27 Fed. Cas. Nos. 16107 and 16108.) Section 223 of the bill carries out the principles suggested in this paragraph as being advisable.

The reasons for the desirability of the simulated admiralty proceeding for suits in rem under section 223 of the bill extend also to its use for the in personam recovery of penalties by civil suits based on such proceedings rather than by civil suits at law.

Sections 231–239: These sections are based upon, and in many provisions follow closely, the policies and language of the so-called Carmack amendment to section 20 of the interstate commerce act (24 Stat. 593, paragraphs 11 and 12) as modified by the first and second Cummins amendments (38 Stat. 1197 and 39 Stat. 441). The constitutionality of this legislation has been sustained by the United States Supreme Court in Atlantic Coast Line R. R. Co. *v.* Riverside Mills (219 U. S. 186).

The Carmack amendment is applicable to no case covered by the House substitute and vice versa. The House substitute applies only to air transportation, defined in section 231 (c) as "transportation wholly by air or partly by air and partly by land and/or water." The interstate commerce act applies to "transportation * * * wholly by railroad, or partly by railroad and partly by water * * *." (See section 1 (a) of the interstate commerce act.)

A comparison of the liabilities imposed upon the common carrier by air by sections 231–239 with the liabilities imposed by the common law, shows that the House substitute works no additional hardship upon the carrier, but rather reduces the liability of the carrier under existing law. It is true that the House substitute requires the initial carrier to issue a bill of lading, which was not required by the common law. (See 1 Hutchinson on Carriers (3d ed. 152.) Yet it is readily apparent that the bill of lading is a protection to the carrier as well as to the shipper or consignee, and the universal practice of common carriers is to issue bills of lading.

At common law the carrier was liable as an insurer of goods accepted for carriage except in certain well recognized cases as where the loss or damage was caused by act of God or the public enemy (1 Hutchinson on Carriers (3d ed., sec. 153), and was liable for negligence in the case of injury to passengers (2 Hutchinson on Carriers (3d ed., sec. 892). This same liability is in nowise extended under sections 231–239. Under such sections the initial carrier is made liable for loss, damage, or injury which may not have occurred on his line but on the line of a subsequent connecting carrier. This, however, is a purely procedural provision and imposes no additional liability but is merely intended to facilitate the remedy of the shipper, for the initial carrier can in turn recover from the carrier actually causing the loss, damage, or injury. (See sec. 237.) The provisions of sections 231–239 in some respects reduce the liability of the carrier in that under them he may now limit the amount of his liability in certain cases as to which in some States, by reason of provisions either of the State statutes or of the State constitution, the carrier is forbidden to limit his common-law liability by any contract whatever, such contracts being deemed contrary to public policy.

Strictly speaking, sections 231–239 deal with and modify only the liability of the initial carrier. Consequently, as stated above, the common-law liabilities are in nowise extended but are continued as before. For instance, it has been held that when goods moving in interstate commerce upon a through bill of lading are delivered in bad condition, and the evidence shows that they were sound when received by the initial carrier but does not affirmatively establish where the loss occurred, there is a common-law presumption applicable under the Carmack amendment against the delivering carrier that the injury occurred on the delivering carrier's line. (See Chicago & North Western Railway Co. *v.* C. C. Whitnack Produce Company, 258 U. S. 365.) For general discussion of this phase of the Carmack amendment, see Adams Express Company *v.* Croninger, 226 U. S. 491; Atlantic Coast Line R. R. Co. *v.* Riverside Mills, 219 U. S. 186; and Oregon-Washington Railroad & Navigation Co. *v.* McGinn, 258 U. S. 409.

The phrase "loss, damage, or injury caused by" found in section 232, although somewhat obscure, is the wording of the Carmack amendment. However, the phrase has been construed by the courts and by the Interstate Commerce Commission to refer only to the common law liability of the carrier. Therefore it makes the carrier an insurer to the extent that it is liable for all loss, damage, or injury (whether or not the result of any negligence), except loss, damage, or injury caused by act of God, the public enemy, the negligence of the shipper himself, or otherwise excepted by the common law. (See Cincinnati & Union Pac. Ry. *v.* Rankin, 241 U. S. 319; Chicago & E. I. R. R. Co. *v.* Collins Co., 249 U. S. 186; Lehigh Valley R. R. Co. *v.* Lysaght, 271 Fed. 906; Simmons Hardware Co. *v.* Southern Ry. Co., 279 Fed. 929; 43 I. C. C. 513.)

The term "bill of lading" as defined in section 231 (f) includes, in case of baggage, a check or receipt. This is only for purposes of clarity, as the Carmack amendment has been construed to cover cases involving passengers' baggage where only a check is issued by the carrier. (See 33 I. C. C. 696; Boston & Maine Railroad *v.* Hooker, 233 U. S. 97.) In this connection it is to be noted that section 239 makes the Federal bills of lading act applicable to air transportation. This led to defining "bill of lading" in section 231 (f) as being either a straight bill or an order bill, a point which was not made clear in the Carmack amendment. It follows that "holder" as defined in section 231 (e) will include the lawful transferee of a straight bill.

Section 235 contains a provision saving to the holder of the bill of lading any remedy or right of action which he has under the existing law. This is similar to a proviso to the Carmack amendment. The proviso has been construed to refer to existing Federal law. (Adams Express Co. *v.* Croninger, 226 U. S. 491, 507. See also Pratt *v.* Denver & R. G. W. R. Co., 284 Fed. 1007.)

It is provided in section 236 that the time for giving notice of claims and for filing of claims shall be computed from the date of delivery or tender of delivery, and in the case of failure to deliver or tender delivery, then from the date upon

which a reasonable time for delivery elapses. The Carmack amendment was not specific on this point (see 33 I. C. C. 591; Gillette Safety Razor Co. *v.* Davis, 278 Fed. 864), and apparently the dates or times from which the period began to run were left to be fixed in the rules of the carrier. In view of this uncertainty, a specific time from which such periods are to be computed has been fixed in the House substitute, as indicated above.

The provison describing the territory to which sections 231–239 are applicable (see sec. 231 (a)) is somewhat broader in scope than the corresponding provision of the Carmack amendment, although it is merely an extension and presents no new problem. The requirement that the point of origin be within the United States is retained; but whereas the Carmack amendment applies to carriers receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, the House substitute, in addition to this, includes within the application of these provisions commerce to any foreign country and embraces the Canal Zone and the possessions along with States and Territories. It has been held that the Carmack amendment does not apply to a shipment to a foreign country not adjacent. (Dexter & Carpenter *v.* Davis, 281 Fed. 285; 33 I. C. C. 682, 695.) Nor is the Carmack amendment applicable to import and export shipments generally. (See 1 Roberts on Federal Liabilities of Carriers, 570; 33 I. C. C. 682; 50 I. C. C. 620; 2 Watkins on Shippers and Carriers, 1195.)

It is provided in section 232 (a) that the liability imposed upon the initial carrier shall not relieve the carrier actually causing the loss, damage, or injury from liability therefor. This is the effect of the holdings under the Carmack amendment. (See 1 Roberts on Federal Liability of Carriers, 598; Georgia, F. & A. R. Co. *v.* Blish Milling Co., 241 U. S. 190; Adams Express Co. *v.* Croninger, 226 U. S. 491.)

Section 241: The section declares the navigable air space to be the air space above the minimum safe altitudes of flight prescribed by the Secretary of Commerce under section 24 (c) of the bill. While navigability in fact is the test of navigability in law (see, for nstance, United States *v.* Cress, 243 U. S. 322; Oklahoma *v.* Texas, 258 U. S. 574; and Brewer Oil Co. *v.* United States, 260 U. S. 77), still Congress has in statutes frequently asserted its opinion as to navigability of certain bodies of water. (See, for example, sec. 3 of the Federal water power act, 41 Stat. 1063; also Revised Statutes, secs. 5248, 5251, and 2476, and 36 Stat. 194.) As to the effect given by the courts to such declaration, see the discussion in this appendix relating to section 21, supra, p. 14.

The declaration in this section is intended to assert a public right of freedom of navigation by aircraft in the air space above prescribed minimum safe altitudes of flight, which is superior to the right of the owner of the subjacent land to use such air space. This public right of freedom of navigation is analagous to the easement or public right of navigation over the navigable waters of the United States. The primary source of power to impose such an easement is the commerce clause. The doctrine that commerce included navigation, and that regulation of navigation included regulation of water craft on rivers was promulgated in Gibbons v. Ogden (9 Wheat. 1, 192), and was no more startling or novel at that date than the present doctrine that regulation of navigation includes regulation of aircraft in navigable air space.

In Monongahela Navigation Co. v. United States (148 U. S. 312, 342) the court stated in discussing the character of land and water highways that the power of Congress was not determined by the character of the highway, but that the power was the same in both cases, irrespective of whether the highway was established by man or provided by nature. Nature has provided navigable airspace, that like water is adapted to navigation, and that like water submerges the subjacent land.

The common law rule of rights of riparian owners, as laid down by Chancellor Kent, was that every riparian owner "has naturally an equal right to the use of the water which flows in the stream adjacent to his lands, as it was wont to run * * * without dimunition or alteration. * * * He has no property in the water itself but a simple usufruct while it passes along." (Cited in United States v. Rio Grande Dam and Irrigation Co., 174 U. S. 690, 702.)

The nature and extent of riparian ownership in lands submerged by navigable streams, lakes, or tidewaters are adequately discussed in Shively v. Bowlby, 152 U. S. 1.

The courts have consistently regarded the rights of the owner of the shore or submerged lands as being limited by the superior rights of the whole people.

Consequently the States may assert their rights, as against the individual, in the interest of navigation, and Congress, since the States under the Constitution have delegated to it the power to regulate commerce, may impose its superior right upon either State or individual in the interests of navigation. South Carolina v. Georgia, et al. (93 U. S. 4) and Shively v. Bowlby, *supra.*

The extent to which a State or Congress may exercise this right as against the riparian owner is exemplified in the cases, the discussion of which follows:

The United States, in the interest of navigation, may make improvements in the navigable waters which may interfere with the riparian owners use of or right of access to the navigable waters, or the use of the submerged lands thereunder, or which may as a consequence destroy property rights, without having to compensate such owner for the damage suffered. See Gibson v. U. S. 166 U. S. 269, (where construction of a dike in the Ohio river cut off claimant's use of a landing and right of access to navigable portion of stream); Scranton v. Wheeler, 179 U. S. 141, (where construction of a pier in St. Marie river, Michigan, cut off riparian owner's right of access to stream altho under State law he owned to thread of stream); Bedford v. U. S. 192 U. S. 217, and Jackson v. U. S., 230 U. S. 1, (where government improvements in Mississippi River caused flooding of large areas of land); Lewis Blue Point Oyster Co. v. Briggs, 229 U. S. 82, (where dredging by United States in Great South Bay, New York, threatened destruction of Company's oyster beds); Keokuk v. Hamilton Bridge Co. v. U. S. 260 U. S. 125 (damage to pier of authorized bridge in Mississippi River while deepening river) and Hawkins Point Light-House Case, 39 Fed. 77 (erection of light-house by U. S. on submerged lands of riparian owner).

There are several cases which have arisen as a result of carrying out Rivers and Harbors projects which are of particular applicability in this regard. Obstructions to navigation have been removed, and harbor lines have been drawn which have resulted in the removal of piers, bridges, etc., which were formerly authorized by a State or the United States, and in the prohibition of building or using piers, wharves, etc., which extend beyond the lines drawn. See West Chicago R. R. vs. Chicago, 201 U. S. 506 (removal of a tunnel under river in order to deepen channel, where tunnel was previously authorized); U. S. v. Chandler-Dunbar Water Power Co., 229 U. S. 53, (United States required removal of power development works and prevented further use of water for power purposes in so far as it conflicted with navigation); Union Bridge Co. v. U. S., 204 U. S. 364, (criminal proceedings by U. S. for failure to make alterations, in accordance with specifications of the Secretary of War, in abridge built under authority of State Act); Philadelphia Co. v. Stimson, 223 U. S. 605, (suit to set aside harbor line established by United States which prevented company from using partially submerged lands for wharf purposes); Greenleaf Lumber Co. v. Garrison, 237 U. S. 251, (suit to enjoin Secretary of War from removing or interfering with wharf as obstruction to navigation which was not an obstruction under Virginia harbor line of 1873 and War Department line of 1890.)

The limitations upon the power of Congress to build dams, levees, lighthouses, and the like, to improve navigation, to remove obstructions, to establish harbor lines, and in other ways to exercise its public right of navigation against the subjacent or riparian owner without taking property so that compensation must be paid, are set forth in the following cases. See Yates v. Milwaukee, 10 Wall. 497, (wharf ordered removed as a nuisance), Pumpelly v. Green Bay Co., 13 Wall. 166, and Monongahela Navigation Co. v. United States, 148 U. S. 312, and United States v. Lynah, 188 U. S. 445 (cases concerning lands overflowed and actually occupied); United States v. Cress, 243 U. S. 316 (ford destroyed and lands overflowed, and mill and mill-seat rendered useless); Bothwell et al v. United States, 254 U. S. 231, (destruction of hay because of overflow.) See also Portsmouth Harbor Land and Hotel Co. v. United States, 260 U. S. 327 (firing of battery over claimants property.)

The conclusion drawn from the cases here cited is that the courts will permit no interference with the navigable water space by the owner of the shore rights, and the court will protect such owner in the use of his shore land only when the result of any act of the United States in improving navigation, removing obstructions, or imposing harbor lines is to cut down the right to use or to render useless the land for normal purposes to such an extent that it is regarded as a taking of property which must be compensated for. When the United States exercises its control over navigable waters the owner of the submerged lands has no right of use as against the dominant right of use by the United States, and so long as his right of use of the shore land is not substantially interfered with he cannot claim compensation for damage done to it. If an owner of shore rights is not

permitted to block off a portion of a stream or lake contiguous to his land which has been considered navigable for Rivers and Harbors purposes, Congress could prevent from blocking off airspace several hundred feet above his land over which he has exercised no control and claim it as free from any public use for flight purposes.

It is not urged that flights should be permitted below certain altitudes or in such manner as to deprive the owner of the submerged land of the normal use and enjoyment of his land. But it is submitted that Congress may prescribe a minimum safe altitude of flight which is analogous to a harbor line or the navigable channel of a stream, and may thus prevent the use, by the owner of the submerged land, of airspace above such altitudes for other than air navigation purposes and in other than a prescribed manner. It is also submitted that Congress could require the removal of a captive advertising balloon or an unusually high chimney as obstructions to air navigation just as it can require the removal of bridges, wharves, or piers which project out or obstruct water navigation, or could prohibit the access of the owner of submerged land into the navigable air space above such land except under prescribed conditions, just as it has prevented access by the riparian owner from his shore to the navigable portion of the stream by the erection of dams, dikes, levees, or piers. While none of the above powers is granted by this act, except the prescribing of minimum safe altitudes of flight, but are left for future action, still the recognition of Congress' power to assert the free right of navigation in the navigable air space, provides the bases for such future action if ever needed.

It should be borne in mind that under the above cases the power of the Federal Government under the commerce clause to assert a public right of navigation in the navigable waters and to prevent obstructions of that right, exists regardless of the ownership of the land submerged by the water (Lewis Bluepoint Oyster Co. v. Briggs, 229 U. S. 82; Philadelphia Co. v. Stimson, 223 U. S. 605; West Chicago Ry. v. Chicago, 201 U. S. 506) or of the land comprising the shore and regardless of the ownership of or usufructary right in the water itself. U. S. v. Chandler-Dunbar Water Power Co., 229 U. S. 53. For that matter, it is generally held that there is no ownership in navigable waters. "Possession is the beginning of ownership," said by Justice Holmes in Missouri v. Holland, 252 U. S. 416, 434. "There are some few things which * * * must still unavoidably remain in common; being such wherein nothing but an usufructary property is capable of being had; * * * Such (among others) are the elements of light, air, and water." (1 Cooley's Blackstone 442.) Although a stream of water may be bordered on both sides by the land of a single owner, he does not own the water. He has a usufructary right, but no ownership. Thus, in the case of percolating waters, gas, and oil title is determined not by the physical location upon, under, or above the man's land, but by whether or not he has reduced them to possession. (United States v. Alexander, 148 U. S. 186; Oklahoma v. Kansas Natural Gas Co., 221 U. S. 229, 255.)

Similarly, the Committee is of the opinion that the Federal Government may assert under the commerce clause and other constitutional powers a public right of navigation in the navigable air space, regardless of the ownership of the land below and regardless of any question as to the ownership of the air itself. And again, just as in the case of water, the Committee takes the view that the decisions will generally hold that there is no private ownership in the air. Such is the conclusion from the only decisions in this country on this point. These hold that flight in the navigable air space does not constitute a trespass; but are merely two unreported lower court cases in Minnesota and Pennsylvania. The opinions will be found in full on pages 71 to 74 of the House hearings For a further denial of the application to the navigable airspace of the old maxim "He who owns the land owns to the heavens above and to the center of the earth, from the zenith to the nadir," see House hearings, pages 66–71, and Law Memo, pages 74–8.

Section 251: The section makes applicable to air navigation provisions of the Criminal Code punishing certain crimes committed upon the high seas or upon the Great Lakes. (See 35 Stat. 1142–1148.) The crimes referred to are murder, manslaughter, assault with intent to commit murder or rape, rape, seduction, loss of life due to negligent conduct of officers of a vessel, maiming, robbery, larceny, receiving stolen goods, piracy, maltreatment of crew, inciting to revolt, or mutiny, seaman laying violent hands on commander, abandonment of mariners, conspiracy to cast away vessel, breaking and entering a vessel, destroying vessel at sea, privateer cruising upon citizens of the United States, robbery on shore by crew of piratical vessel, piracy under color of a foreign commission, piracy by

subjects of a foreign State, running away with vessel, and confederating with pirates.

Many of the above crimes are not punishable under State law. Others, such as murder, are punishable under State law. In the latter case the slaying would be an offense against both the State and Federal law. The necessity for making such an offense a Federal crime arises from the fact that in case of a crime aboard an aircraft it is extremely difficult to prove the locus of the crime for the purpose of obtaining venue of the proper State or county court. An aircraft flying from New York to Washington may pass over five States and the District of Columbia. From aboard the aircraft State and county lines are impossible to determine in many instances. Therefore the section is deemed advisable in order to prevent the use of aircraft for the evasion of some of the more important criminal laws and thus interfere with and burden interstate and foreign air navigation.

Section 261: The provisions of this section are based upon sections 41 and 45 of the Judicial Code.

Sections 301-307: For a general discussion of the necessity for the customs provisions, see discussions hereinbefore in this title under the heading "Customs, Report and Entry Provision" (p. 11, supra). The provisions of these sections were prepared in connection with the officers of the Customs Division of the Treasury Department and have been indorsed by the Secretary of the Treasury. (See also House Hearings, p. 36.)

Section 321: The act referred to (27 Stat. 449) relates to sanitary regulation and bills of health for vessels from foreign ports coming into the United States. The section makes the provisions of the act applicable to aircraft coming from foreign ports.

Section 322: Under the narcotic drug import and export act, narcotic drugs may not be imported except in accordance with licenses issued by the Federal narcotics control board. The section prohibits the importation of narcotic drugs in aircraft, whether or not the importation, if made by vessel, would be lawful and in accordance with licenses of the board.

Section 323: The section makes unlawful the following offenses against neutrality: Fitting out of aircraft to be employed to commit hostilities against any foreign nation with which the United States is at peace; augmenting the armament of any aircraft in the service of any foreign nation if such foreign nation is at war with a nation with which the United States is at peace; organizing of a military expedition against any foreign nation with which the United States is at peace. (See 35 Stat. pp. 1089 to 1091.) The section also makes applicable to aircraft certain provisions in Titles II, III, V, and VI of the espionage act (40 Stat. p. 217) relating, for example, to anchorage of foreign craft in ports of the United States; departure of vessels carrying arms to a foreign belligerent nation when the United States is neutral; the exportation of munitions of war; the setting fire to, bombing, or otherwise injuring foreign and domestic vessels within the jurisdiction of the United States, or domestic vessels upon the high seas.

Section 324: Under the existing law (26 Stat. 653) the Weather Bureau has charge of the forecasting of weather, the issuance of storm warnings, and the display of weather signals for the benefit of navigation, and the distribution of meteorological information and the taking of meteorological observations in the interest of commerce. The committee feels that there is some doubt whether the terms "navigation" and "commerce" could properly be construed to apply to air navigation and air commerce. For that reason, an additional paragraph is added making it mandatory upon the Chief of the Weather Bureau to furnish meteorological information for air navigation, particularly upon air routes approved by the Secretary under section 31 of the act. The necessities of air commerce require information at any moment of time as to the prevailing weather along the route as well as forecasts or warnings as to probable future weather conditions.

Section 325: Under existing law, in force since 1802, Coast Guard vessels are enabled to require other vessels to halt if suspected of being liable to seizure or examination for violation of law, and in case the vessel fails to halt it may be fired upon after a gun has first been fired as a signal. The section amends existing law so that aircraft liable to such seizure or examination may be halted by Coast Guard vessels or aircraft.

Section 326: For the existing organic law relating to the National Advisory Committee for Aeronautics. (See 38 Stat. 930, or Law Memo. p. 55.)

Section 401: No comment.

Section 402: No comment.

Section 403: No comment.

Sections 404, 405, and 406: The definition of "citizen of the United States" is modeled upon that now applicable under our shipping laws. (See sec. 1 of the shipping act of 1916, as amended.) Article 7 of the International Air Navigation Convention (see p. 10 of the convention compliation) provides that "no incorporated company can be registered as the owner of an aircraft unless it possesses the nationality of the State in which the aircraft is registered, unless the president or chairman of the company and least two-thirds of the directors possess such nationality, and unless the company fulfills all other conditions which may be prescribed by the laws of said State."

Registered aircraft of the United States will serve as an auxiliary air force in time of war. It is, therefore, desirable that such aircraft be in fact controlled by citizens of the United States in order that possession of them may be readily obtained by the United States in time of war and that the aircraft be in suitable condition. The Secretary of Commerce and representatives of the Secretary of War and Secretary of the Navy agreed that it was desirable, in the case of corporate owners, that at least 75 per cent of interest in the corporation should be held by citizens of the United States, for the reason that corporations created under our laws, but in fact foreign controlled, should not be able to possess craft that fly the United States flag and should be a part of our air-fleet auxiliary in time of war.

Section 407: The section, in accordance with the principles of the Panama Canal act (37 Stat. 560, 569), section 20 of the national prohibition act (41 Stat. 322), and section 42 of the employees' compensation act (39 Stat. 750), makes the provisions of the bill applicable in the Canal Zone only to such extent as the President may designate by Executive order and by regulations prescribed by him. Enforcement of the bill, if enacted, in the Canal Zone will be by the Governor of the Panama Canal in lieu of the Secretary of Commerce. The provision was specifically requested by the Secretary of War and the Governor of the Panama Canal.

Section 408: No comment.

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